March 13, 2023

The Honorable Jennifer Bradley
410 Senate Building
404 South Monroe Street
Tallahassee, FL 32399-1100

Dear Senator Bradley:

BSA | The Software Alliance[1] strongly supports strong privacy protections for consumers and appreciates your work to improve consumer privacy through SB 262. In our federal and state advocacy, as you may recall, BSA works to advance legislation that ensures consumers' rights — and the obligations imposed on businesses — function in a world where different types of companies play different roles in handling consumers' personal data. At the state level, we have supported strong privacy laws in a range of states, including consumer privacy laws enacted in Colorado, Connecticut, and Virginia.

BSA is the leading advocate for the global software industry. Our members are enterprise software and technology companies that create the business-to-business products and services to help their customers innovate and grow. For example, BSA members provide tools including cloud storage services, customer relationship management software, human resource management programs, identity management services, and collaboration software. Businesses entrust some of their most sensitive information — including personal information — with BSA members. Our companies work hard to keep that trust. As a result, privacy and security protections are fundamental parts of BSA members' operations, and their business models do not depend on monetizing users' data.

As you might remember, BSA has been actively involved in Florida's efforts to craft privacy legislation over the past several legislative sessions. We again appreciate the opportunity to share our feedback on consumer privacy and SB 262. Our recommendations below focus on our core priorities in the legislation: the role of processors, the broad definition of social media platforms, the treatment of employment-related information, and the enforcement provisions.

We support SB 262's clear recognition of the unique role of data processors. Leading global and state privacy laws reflect the fundamental distinction between processors, which handle

[1] BSA's members include: Adobe, Alteryx, Atlassian, Autodesk, Bentley Systems, Box, Cisco, CNC/Mastercam, CrowdStrike, Databricks, DocuSign, Dropbox, Graphisoft, IBM, Informatica, Juniper Networks, Kyndryl, MathWorks, Microsoft, Okta, Oracle, Prokon, PTC, Salesforce, SAP, ServiceNow, Shopify Inc., Siemens Industry Software Inc., Splunk, Trend Micro, Trimble Solutions Corporation, TriNet, Twilio, Unity Technologies, Inc., Workday, Zendesk, and Zoom Video Communications, Inc.

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personal data on behalf of another company, and controllers, which decide when and why to collect a consumer's personal data. Every state to enact a comprehensive consumer privacy law has incorporated this critical distinction. In Colorado, Connecticut, Utah, and Virginia, state privacy laws assign important — and distinct — obligations to both processors and controllers.[2] In California, the state's privacy law for several years has distinguished between these different roles, which it terms businesses and service providers.[3] BSA and its members applaud you for incorporating this globally recognized distinction into SB 262.

While SB 262 provides consumers with important rights over their personal information, including the right to correct and delete that information, there is a continued need to improve the bill's provisions with respect to the role of processors in fulfilling these new consumer rights. For instance, the bill assumes that a controller can "direct" each of the many processors it works with to honor consumer rights requests without setting clear parameters on the types of directions a controller may give or explaining how processors are to respond to directions that cannot be fulfilled.[4] More concerning, the bill does not account for a processor's ability to create scalable tools that controllers can use to fulfill consumer rights requests for data held by processors. As other states have recognized, clearly addressing these issues is critical to ensuring that the rights given to consumers in a state privacy law actually function in practice.[5] We strongly recommend that SB 262 adopt the approach used in all current state laws, of either permitting processors to respond to one-by-one requests from a controller to provide information responsive to a consumer rights request, or allowing processors to create scalable tools that controllers can use to respond to such requests.[6]

We also encourage the Committee to focus on appropriately scoping the bill's definition of "social media platform." The bill currently defines this term as "a form of electronic communication through which users create online communities to share information, ideas, personal messages, and other content."[7] While this definition is intended to focus on social media companies, we are concerned that it could apply to products that do not have a primary

[2] *See, e.g.,* Colorado's CPA Sec. 6-1-1303(7, 19); Connecticut DPA Sec. 1(8, 21); Utah CPA Sec. 13-61-101(12, 26); Virginia CDPA Sec. 59.1-575.

[3] *See, e.g.*, Cal. Civil Code 1798.140(d, ag).

[4] *See, e.g.,* SB 262, Sec. 5(a)(1) requiring controllers to "delete the consumer's personal information from its records and direct any processors to delete such information" in response to a consumer's deletion request; Sec. 5(b) requiring controllers to "correct inaccurate personal information" and "direct any processors to correct such information" in response to a consumer's correction request. This approach not only fails to account for the types of operational concerns raised above, but it also assumes that companies will implement processes for responding to requests one-by-one, rather than designing larger scale compliance mechanisms that help companies respond to consumer requests more quickly and comprehensively.

[5] In contrast, state privacy laws in Colorado, Connecticut, Virginia, and Utah establish that processors are to provide a controller with the tools or organizational measures the controller can use to fulfill consumer rights requests. *See, e.g.,* Colorado's CPA Sec. 6-1-1305(2)(a); Connecticut DPA Sec. 7(1); Utah CPA Sec. 13-61-301(1)(b); Virginia CDPA Sec. 59.1-579(A)(1).

[6] For more information on the role of processors in fulfilling consumer rights request, see BSA, Consumer Rights to Access, Correct and Delete Data: A Processor's Role, available at https://www.bsa.org/files/policy-filings/10122022controllerprorights.pdf.

[7] *See*: SB 262, Section 1(1)(a).

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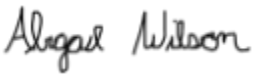
purpose of facilitating social interactions. For instance, the current definition can be read to include email or text message services that do not promote content to users. Given the potential to inadvertently reach these types of products and services, among others, we recommend that you narrow the definition to services or platforms where the primary purpose is social interaction with other account holders or users within the service or platform. Creating a clear and appropriately scoped definition is critical to avoid applying these provisions in unintended contexts.

We support SB 262's focus on protecting the privacy of consumers and excluding employment data from the bill's scope and from its definition of "consumer." This approach ensures that the bill focuses on consumers, who face distinct privacy-related concerns from those raised by employees. It also aligns SB 262 with state privacy laws in Colorado, Connecticut, Utah, and Virginia, which focus on protecting consumer privacy. While this data is excluded from the bill's scope in Section 2(1)(h), the current language focuses on information collected by controllers and we recommend revising this provision to apply to information collected by both controllers and processors. Finally, we support SB 262's approach to enforcement, which provides the Florida Attorney General with exclusive authority to enforce the bill. BSA supports strong and exclusive regulatory enforcement by the Attorney General's office, which promotes consistent and clear enforcement.

We strongly encourage you to ensure that SB 262 works in practice and that it promotes a harmonized approach to protecting consumer privacy for Floridians. Privacy laws around the world need to be consistent enough that they are interoperable, so that consumers understand how their rights change across jurisdictions and businesses can readily map obligations imposed by a new law against their existing obligations under other laws. Thank you for your thoughtful approach in establishing strong consumer privacy protections, and for your consideration of our perspective. BSA would be happy to provide further perspective and resources on this important bill as it progresses through the legislative process.

Sincerely,



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